

9613  
10637-B

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

ROBERT W. ALVORD\*  
CHARLES T. KAPPLER  
JOHN H. DOYLE\*  
RICHARD N. BAGENSTOS  
JAMES C. MARTIN, JR.\*

\* ALSO ADMITTED IN NEW YORK  
\* ALSO ADMITTED IN MARYLAND

LAW OFFICES  
ALVORD AND ALVORD

200 WORLD CENTER BUILDING  
918 SIXTEENTH STREET, N.W.  
WASHINGTON, D.C.

20006-2973 No.  
(202) 393-2266

OF COUNSEL  
URBAN A. LESTER

CABLE ADDRESS  
"ALVORD"

TELEX  
440367 A AND A

TELEFAX  
(202) 393-2156

Date .....

Fee \$ .....

RECORDATION NO. 10637-B  
FILED 1425

MAY 10 1989 - 2 30 PM May 10, 1989

INTERSTATE COMMERCE COMMISSION

9-130A038

Ms. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Ms. McGee:

Enclosed for recordation pursuant to the provisions of  
49 U.S.C. Section 11303(a) are two (2) fully executed original  
copies of an Assignment and Assumption Agreement dated May 10,  
1989, a secondary document.

The Agreement relates to documents filed and recorded  
under Recordation Number 10637.

The names and addresses of the parties to the enclosed  
document are:

Assignor: SH Leasing, Inc.  
c/o MGC Leasing Corp.  
666 Fifth Avenue  
New York, New York 10103

Assignee: Citicorp Railmark, Inc.  
c/o Citicorp North America, Inc.  
601 Midland Avenue  
Rye, New York 10580

Also enclosed is a check in the amount of \$13 payable to  
the order of the Interstate Commerce Commission covering the  
required recordation fee.

Kindly return a stamped copy of the enclosed document to  
Charles T. Kappler, Esq., Alvord and Alvord, 918 Sixteenth  
Street, N.W., Washington, D.C. 20006

MAY 10 2 24 PM '89  
MOTOR OPERATING UNIT


West.

Ms. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
May 10, 1989  
Page Two

A short summary of the enclosed secondary document to appear in the Commission's Index is:

Assignment and Assumption Agreement dated May 10, 1989 between SH Leasing, Inc., Assignor, and Citicorp Railmark, Inc., Assignee, covering 146 100-ton Covered Hopper Cars in the series WCFX (formerly MBFX) 4600 - 4749.

Very truly yours,

  
Charles T. Kappler

Enclosures

**Interstate Commerce Commission**  
Washington, D.C. 20423

5.8

5.10.89

OFFICE OF THE SECRETARY

Charles T. Kappler  
Alvord & Alvord  
918 16th St. N.W.  
Washington, D.C. 20008

Dear: Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 5.10.89 , at 2:30pm , and assigned recordation number(s). 16242-D, 10637-B, 10627-E, 12259-A

11968-B

9132-D

Sincerely yours,



Noreta R. McGee  
Secretary

Enclosure(s)

10637-18  
MAY 10 1989 -2 30 PM

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT AND ASSUMPTION AGREEMENT

This is an Assignment and Assumption Agreement dated May 10, 1989 (this "Agreement") among Citicorp Railmark, Inc., a Delaware corporation ("Citicorp"), SH Leasing, Inc., a Delaware corporation ("SH Leasing"), Western Co-operative Fertilizers (U.S.) Inc. (the "Lessee") and Western Co-operative Fertilizers Limited ("WCFL").

BACKGROUND

Unilease No. 17, Inc. ("Unilease") and Lessee entered into an Equipment Lease agreement dated as of May 1, 1979, (the "Lease") whereby Unilease agreed to lease 150 covered hopper cars, as more fully described therein, (the "Equipment") to the Lessee. In conjunction with the Lease, Unilease entered into the agreements set forth on Schedule I hereto (the "Lease Agreements"). Equilease Corporation ("Equilease") is the successor in interest to Unilease under the Lease Agreements.

SH Leasing purchased the Equipment from Equilease pursuant to an asset purchase agreement dated as of January 27, 1989 among Equilease, Equilease Marketing Corporation and SH Leasing.

SH Leasing wishes to sell the Equipment and related assets to Citicorp and Citicorp is willing to purchase the Equipment and related assets pursuant to the terms of an Asset Purchase Agreement dated as of May 10, 1989 (the "Asset Purchase Agreement") among Citicorp, Citicorp North America, Inc., DC-9-NY-1, Inc. and SH Leasing, and the Lessee's consent is required for such purchase to be accomplished.

NOW THEREFORE, intending to be legally bound, the parties hereto agree as follows:

Section 1. SH Leasing hereby assigns to Citicorp all of its right, title and interest in and to the Equipment and the Lease Agreements and all benefits due and to become due thereunder arising from and after the closing under the Asset Purchase Agreement.

Section 2. Citicorp hereby accepts such assignment and assumes all of the duties and obligations of SH Leasing under the Lease Agreements arising from and after the closing under the Asset Purchase Agreement with respect to the assets relating to

such Lease Agreements, and agrees and confirms that it shall be deemed to be a party to such Lease Agreements from and after the date hereof and agrees to be bound by all of the terms of and to undertake all of the obligations of SH Leasing thereunder from and after the date hereof.

Section 3. SH Leasing for the benefit of Citicorp and the other parties to the Lease Agreements hereby confirms that it shall not be released from any of its obligations or liabilities arising or accruing under the Lease Agreements or with respect to the Equipment prior to the closing of the Asset Purchase Agreement.

Section 4. Citicorp and SH Leasing agree to indemnify and hold each other harmless with respect to obligations under the Lease Agreements and the Equipment pursuant and subject to the terms set forth in the Asset Purchase Agreement.

Section 5. As an inducement to the Lessee and WCFL to enter into this Agreement and to furnish the consent being separately granted today, each of SH Leasing and Citicorp individually and not jointly represents and warrants on behalf of itself (but not the other) to Lessee and WCFL as follows:

(a) It is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation and has all requisite power and authority to own or lease its properties and assets as now owned or leased and to carry on its business as and where now being conducted (and, in the case of Citicorp, as contemplated to be owned or leased and as contemplated to be conducted in light of the Asset Purchase Agreement).

(b) The execution, delivery and performance of this Agreement and the Asset Purchase Agreement have been duly authorized by all necessary corporate action on its part. Each of this Agreement and the Asset Purchase Agreement has been duly executed and delivered by it and constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms.

(c) The execution and delivery of this Agreement and the Asset Purchase Agreement do not, and the consummation of the transactions contemplated by this Agreement and the Asset Purchase Agreement and compliance with the terms, conditions and provisions hereof and thereof by it will not (i) contravene any provision of its articles of incorporation or bylaws; (ii) conflict with or result in a breach of or constitute a default

(or an event which might, with the passage of time or the giving of notice or both, constitute a default) under any indenture, mortgage, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its assets may be bound or affected, or any judgment or order of any court or governmental department, commission, board, agency or instrumentality, domestic or foreign, or conflict with or violate any applicable law, rule or regulation; (iii) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of its assets or give to others any interests or rights therein; (iv) result in the maturation or acceleration of any liability or obligation of it or give others any right to declare or cause any such maturation or acceleration; or (v) result in the termination of or loss of any right, or give others any right to cause such a termination or loss under any agreement or contract to which it is a party or by which it or its assets may be bound or affected.

(d) There are no actions, suits, investigations, or proceedings pending or, to the best of its knowledge, threatened against, affecting or involving it, this Agreement or the Asset Purchase Agreement at law or in equity, by or before any court or governmental department, agency or instrumentality.

(e) No consent, approval or authorization of, or registration or filing with, any person, including any governmental authority or other regulatory agency, is required in connection with the execution and delivery of this Agreement or the Asset Purchase Agreement or the consummation of the transactions contemplated hereby or thereby except for the filings in Canada and with the ICC.

(f) Except as noted below, the Asset Purchase Agreement, this Agreement and the Guaranty being given by CITICORP, Citicorp's corporate parent (the "Guaranty"), are in full compliance with the following (with capitalized terms not previously defined having the meanings set forth on Schedule 1 hereto): (i) Section 3.6(e) of the Participation Agreement (regarding transfers of Owner Interest, as defined in the Participation Agreement); (ii) Section 16 of the Lease (regarding assignment); (iii) Section 2.10 of the Security Agreement (regarding sales of assets); and (iv) all other applicable provisions of the Lease Agreements. Immediately following the consummation of the transactions contemplated by the Asset Purchase Agreement, this Agreement and the Guaranty, Citicorp shall not be in default under any of the provisions of any of the Lease Agreements. Notwithstanding the foregoing, it is acknowledged that on the date hereof, Citicorp is not an

"institutional investor" within the meaning of Section 3.6(e) of the Participation Agreement.

Section 6. As a further inducement to Lessee and WCFL, each of SH Leasing and Citicorp shall cause to be furnished to Lessee and WCFL on the date hereof an opinion of its respective counsel, in form and substance satisfactory to the Lessee and WCFL, substantially identical to those opinions being delivered by such counsel under the Asset Purchase Agreement.

Section 7. Citicorp hereby acknowledges that it has received a copy of the Memorandum of Agreement dated as of August 15, 1987 between Lessee and PLM Railcar Management Services, Inc. ("PLM"), as amended by Addendum I thereto, providing for the sublease of the then existing Equipment by Lessee to PLM (the "PLM Sublease") and Citicorp hereby irrevocably consents to the PLM Sublease. Citicorp acknowledges the existence of a Memorandum of Agreement dated as of October 1, 1986 between Lessee and Central Soya Co., Inc. (the "Central Sublease") entered into by the predecessors of SH Leasing and Citicorp irrevocably waives any objection to the Central Sublease.

Section 8. Upon request by the Lessee, SH Leasing and Citicorp jointly and severally agree to reimburse the Lessee promptly for all of Lessee's reasonable costs and expenses (including the reasonable fees and disbursements of its counsel) incurred in connection with its consideration of this Agreement, the Guaranty and the granting of its consent to the purchase contemplated by the Asset Purchase Agreement.

Section 9. This Agreement shall be binding upon and inure to the benefit of the parties hereto and, to the extent successorship or assignment is made contemporaneously with permitted successorship or assignment under the Participation Agreement and the Equipment Lease (as such terms are defined in the Lease Agreements), their successors and assigns.

Section 10. Upon the execution of this Agreement, Citicorp shall be deemed "Lessor" and the owner for all purposes under the Lease Agreements in accordance with the terms thereof and hereof and each reference in the Lease Agreements to or encompassing the owner, shall hereafter be deemed to refer to Citicorp.

Section 11. All notices and communications which would have been sent to SH Leasing (as successor to Equilease, itself successor to Unilease) under the Lease Agreements or any

agreement contemplated thereby, as now or hereafter amended, shall be directed in accordance with the provisions of the Lease Agreements to Citicorp at the following address: c/o Citicorp North America, Inc., 601 Midland Avenue, Rye, New York 10580 Attn: President, Citicorp Railmark, Inc.

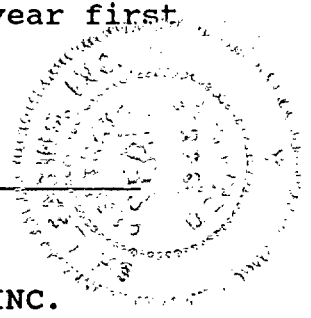
Section 12. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Assumption Agreement to be duly executed by their respective duly authorized officers as of the day and year first above written.

SH LEASING, INC.

By: [Signature]

Title: V.P.



CITICORP RAILMARK, INC.

By: [Signature]

Title: Vice President

WESTERN CO-OPERATIVE  
FERTILIZERS (U.S.) INC.

By: \_\_\_\_\_

Title: Treasurer

WESTERN CO-OPERATIVE  
FERTILIZERS (U.S.) INC.

By: \_\_\_\_\_

Title: President

WESTERN CO-OPERATIVE  
FERTILIZERS LIMITED

By: \_\_\_\_\_

Title: Chief Financial  
Officer

WESTERN CO-OPERATIVE  
FERTILIZERS LIMITED

By: \_\_\_\_\_

Title: President/Chief  
Executive Officer



the provisions of the Lease Agreements to Citicorp at the following address: c/o Citicorp North America, Inc., 601 Midland Avenue, Rye, New York 10580 Attn: President, Citicorp Railmark, Inc.

Section 12. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Assumption Agreement to be duly executed by their respective duly authorized officers as of the day and year first above written.

SH LEASING, INC.

By: \_\_\_\_\_  
Title:

CITICORP RAILMARK, INC.

By: \_\_\_\_\_  
Title:

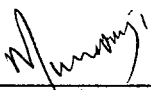
WESTERN CO-OPERATIVE  
FERTILIZERS (U.S.) INC.

By:   
Title: Treasurer

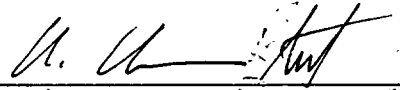
WESTERN CO-OPERATIVE  
FERTILIZERS (U.S.) INC.

By:   
Title: President

WESTERN CO-OPERATIVE  
FERTILIZERS LIMITED

By:   
Title: Chief Financial  
Officer

WESTERN CO-OPERATIVE  
FERTILIZERS LIMITED

By:   
Title: President/Chief  
Executive Officer

CORPORATE FORM OF ACKNOWLEDGEMENT

State of New York

County of Westchester, ss:

On this 9th day of May, 1989 before me personally appeared, James S. Archibald to me personally known, who being by me duly sworn, says that (s)he is the Vice President of Citicorp Railmark, Inc., ~~that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.~~

[SEAL]

Thomas A. Matamoros  
Signature of Notary Public

THOMAS A. MATAMOROS  
Notary Public, State of New York  
No. 31-4723452  
Qualified in New York County  
Cert. Filed in Westchester County  
Commission Expires November 30, 1990


**CORPORATE FORM OF ACKNOWLEDGEMENT**

State of New York

County of New York, ss:

On this 9<sup>th</sup> day of May, 1989 before me personally appeared, Thomas G. Wendel, to me personally known, who being by me duly sworn, says that he is the Senior Vice President of SH Leasing, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL]

  
Ralph J. Carter  
Signature of Notary Public

**RALPH J. CARTER**  
Notary Public, State of New York  
No. 24-4880483  
Qualified in Kings County  
Certificate Filed in New York County  
Commission Expires December 15, 1990

**CORPORATE FORM OF ACKNOWLEDGEMENT**

Country of Canada

Province of Alberta

City of Calgary , ss:

On this 4 day of May, 1989 before me personally appeared, Konrad H. Komitsch, to me personally known, who being by me duly sworn, says that he is the President of Western Co-operative Fertilizers (U.S.) Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by due authority, and (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL]

 Gordon S. Griffiths

Notary Public in and for the Province of Alberta

CORPORATE FORM OF ACKNOWLEDGEMENT


Country of Canada

Province of Alberta

City of Calgary ,ss:

On this 4 day of May, 1989 before me personally appeared, Konrad H. Komitsch, to me personally known, who being by me duly sworn, says that he is the President and Chief Executive Officer of Western Co-operative Fertilizers Limited, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by due authority, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL]

 Gordon S. Griffiths  
Notary Public in and for the Province of Alberta

## Schedule 1

1. Participation Agreement dated as of May 1, 1979 among Western Co-operative Fertilizers (U.S.) Inc., Western Co-operative Fertilizers Limited, Unilease No. 17, Inc., Aetna Life Insurance Company and The Connecticut Bank and Trust Company (the "Participation Agreement").
2. Purchase Order Assignment dated as of May 1, 1979 between Unilease No.17, Inc. and Western Co-operative Fertilizers (U.S.) Inc.
3. Equipment Lease dated as of May 1, 1979 between Unilease No. 17, Inc. and Western Co-operative Fertilizers (U.S.) Inc.
4. Security Agreement-Trust Deed dated as of May 1, 1979 from Unilease No. 17, Inc. to The Connecticut Bank and Trust Company, National Association, (the "Security Agreement").
5. Guaranty Agreement dated as of May 1, 1979 between Unilease No. 17, Inc. and Western Co-operative Fertilizers Limited.
6. 10-5/8% Secured Notes issued to the Note Purchaser in 1979 in aggregate principal amount not exceeding \$4,500,000 under and pursuant to the Participation Agreement.